procedures at the Readsville VOR is no longer required for air traffic control purposes. As a result, modification of the Readsville transition area is necessary to delete this airspace from the transition area designation.

Since the proposed modification will reduce the existing designated Readsville, Mo., transition area, it will not impose any additional burden on any person. Therefore, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., July 20, 1967, as hereinafter set forth:

In § 71.181 (32 F.R. 2148), the Readsville, Mo., transition area is amended to read:

READSVILLE, MO.

That airspace extending upward from 1,200 feet above the surface within an area bounded on the north by V-4, on the east by the arc of a 33-mile radius circle centered on Lambert-St. Louis Municipal Airport (latitude 38°44'50" N., longitude 90°21'55" W.), on the south by V-12, and on the west by V-63.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on May 15, 1967.

EDWARD C. MARSH,
Director, Central Region.

[F.R. Doc. 67-5995; Filed, May 29, 1967; 8:48 a.m.]

[Airspace Docket No. 67-CE-22]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On March 23, 1967, a notice of proposed rule making was published in the FEDERAL REGISTER (32 F.R. 4429) stating that the Federal Aviation Administration proposed to designate controlled airspace in the Clintonville, Wis., terminal area.

Interested parties were afforded an opportunity to participate in the rule making through submission of comments. The one comment received offered no objection to the proposal.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., July 20, 1967, as hereinafter set forth:

In § 71.131 (32 F.R. 2148), the following transition area is added:

CLINTONVILLE, WIS.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Clintonville Municipal Airport (latitude 44°36'50" N., longitude 88°43'50" W.) and within 2 miles each side of the 145° bearing from Clintonville Municipal Airport, extending from the 6-mile radius area to 8 miles southeast of the airport.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on May 15, 1967.

EDWARD C. MARSH,
Director, Central Region.

[F.R. Doc. 67-5997; Filed, May 29, 1967; 8:48 a.m.]

[Airspace Docket No. 67-CE-25]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On March 25, 1967, a notice of proposed rule making was published in the FEDERAL REGISTER (32 F.R. 4543) stating that the Federal Aviation Administration proposed to designate controlled airspace in the South Haven, Mich., terminal area.

Interested parties were afforded an opportunity to participate in the rule making through submission of comments. The one comment received offered no objection to the proposal.

The South Haven, Mich., Municipal Airport coordinates recited in the notice of proposed rule making have been changed slightly in this final rule. Since this change is minor in nature and imposes no additional burden on anyone, it is being incorporated in the rule without notice and public procedure.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., July 20, 1967, as hereinafter set forth:

In § 71.181 (32 F.R. 2148), the following transition area is added:

SOUTH HAVEN, MICH.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of South Haven, Mich. Municipal Airport (latitude 42°21'00" N., longitude 86°15'30" W.) and within 2 miles each side of the Pullman, Mich., VORTAC 226° radial extending from the 5-mile radius area to the VORTAC.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on May 15, 1967.

EDWARD C. MARSH,
Director, Central Region.

[F.R. Doc. 67-5998; Filed, May 29, 1967; 8:48 a.m.]

[Airspace Docket No. 67-CE-26]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On March 23, 1967, a notice of proposed rule making was published in the FEDERAL REGISTER (32 F.R. 4430) stating that the Federal Aviation Administration proposed to designate controlled airspace in the Holland, Mich., terminal area.

Interested parties were afforded an opportunity to participate in the rule making through submission of comments. The one comment received offered no objection to the proposal.

The Holland, Mich., Park Township Airport coordinates recited in the notice of proposed rule making have been changed slightly in this final rule. Since this change is minor in nature and imposes no additional burden on anyone, it is being incorporated in the rule without notice and public procedure.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., July 20, 1967, as hereinafter set forth:

In § 71.181 (32 F.R. 2148), the following transition area is added:

HOLLAND, MICH.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Holland, Mich., Park Township Airport (latitude 42°47'45" N., longitude 86°09'45" W.).

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on May 15, 1967.

EDWARD C. MARSH,
Director, Central Region.

[F.R. Doc. 67-5999; Filed, May 29, 1967; 8:48 a.m.]

[Airspace Docket No. 67-CE-29]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On March 23, 1967, a notice of proposed rule making was published in the FEDERAL REGISTER (32 F.R. 4432) stating that the Federal Aviation Administration proposed to designate controlled airspace in the Greenville, Ill., terminal area.

Interested parties were afforded an opportunity to participate in the rule making through submission of comments. The one comment received offered no objection to the proposal.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., July 20, 1967, as hereinafter set forth:

In § 71.181 (32 F.R. 2148), the following transition area is added:

GREENVILLE, ILL.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Greenville, Ill., Airport (latitude 38°50'10" N., longitude 89°22'40" W.) and within 2 miles each side of the 348° bearing from Greenville Airport, extending from the 5-mile radius area to 8 miles north of the airport.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on May 15, 1967.

EDWARD C. MARSH,
Director, Central Region.

[F.R. Doc. 67-6000; Filed, May 29, 1967; 8:49 a.m.]

[Airspace Docket No. 67-WA-4]

PART 75—ESTABLISHMENT OF JET ROUTES

Alteration of Jet Routes

On February 24, 1967, a notice of proposed rule making was published in the FEDERAL REGISTER (32 F.R. 3228) stating that the Federal Aviation Agency was considering realignment of Jet Route No. J-4 from Blythe, Calif., via Gila Bend,

Ariz., to San Simon, Ariz.; and realignment of Jet Route No. J–2 from Gila Bend to San Simon. At the request of the Department of the Army, a supplemental notice of proposed rule making was published in the FEDERAL REGISTER on March 31, 1967 (32 F.R. 5425) extending the period for comment from March 27, 1967, to April 14, 1967.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. Due consideration was given to all comments received. The Air Transport Association of America endorsed the proposal. The Department of the Army did not comment on the proposed realignment of J–2 and J–4 between Gila Bend and San Simon but objected to the proposed realignment of J–4 between Blythe and Gila Bend which would overlie R–2308A, R–2308B, and R–2306B. R–2308A and R–2308B currently extend up to FL 200, and R–2306B extends up to FL 240. Operation along the proposed realignment of J–4 could easily be conducted above these restricted areas. However, the Department of the Army plans to submit a proposal to the FAA in the near future which will request a substantial increase in the vertical extent of R–2308A, R–2308B, and R–2306B. Therefore, the FAA plans to receive and evaluate this proposal before action is taken on the proposed realignment of J–4 between Blythe and Gila Bend.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., July 20, 1967, as hereinafter set forth.

1. In § 75.100 (32 F.R. 2341) the following actions are taken:

In the texts of J–2 and J–4 "INT of the Gila Bend 098° and the San Simon, Ariz., 286° radials; San Simon;" is deleted and "San Simon, Ariz.;" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Washington, D.C., on May 23, 1967.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 67–5994; Filed, May 29, 1967; 8:48 a.m.]

Chapter II—Civil Aeronautics Board

SUBCHAPTER F—POLICY STATEMENTS

[Reg. No. PS–33; Amdt. 12; Docket No. 18273]

PART 399—STATEMENT OF GENERAL POLICY

Military Exemptions

MAY 25, 1967.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 25th day of May 1967.

On March 15, 1967, by notice of proposed rule making EDR–113/PSDR–18 (32 F.R. 4421), the Board proposed to amend Part 399 by changing the minimum rates for individually ticketed and waybilled military transportation (Categories A, Z, and X) and by moving the domestic cargo charter minimum-rate conditions from Part 399 to Part 288 of the Economic Regulations. Written data, views, and arguments have been filed in response to the notice. All comments and supporting statements before the Board have been carefully considered, and all contentions not otherwise disposed of hereinafter are rejected. Final amendments to Part 288, Exemption of Air Carriers for Military Charters and Substitute Service, are being adopted concurrently herewith (ER–494).

Individually ticketed military passenger transportation. The notice proposed to continue to equate the minimum fare for individually ticketed military passengers (Categories A and Z) with the one-way Category B passenger charter minimum rate, with a resulting proposed reduction from 3.60 to 3.20 cents per passenger-mile.[1] A Department of Defense (DOD) proposal that no separate minimum fares be established for individually ticketed transportation and that the Category B minimum rates apply was rejected.

In its comments, DOD again proposes to discontinue the designation of individually ticketed passenger transportation on scheduled commercial flights as Category A or Z and recommends that no minimum rate be established. Under its proposal, DOD and the carriers would decide by negotiation whether passengers move in charter or scheduled flights. DOD would apparently apply the minimum Category B round-trip charter rate to the bulk of the individually ticketed passengers, since it states that "DOD passenger business over MAC channels is essentially round trip in nature." Imbalances would be paid for at the one-way Category B minimum rate. The DOD Request for Proposal for fiscal year 1968 incorporates its rate proposal.

Northwest Airlines, Inc., opposes the DOD proposal and urges the Board to sustain the position taken in the notice. Northwest contends that there is no justification for eliminating the present distinction between Category A and charter rates. The carrier cites the Board's previous statements regarding the higher value of individually ticketed service and asserts that it is proper to establish minimum Category A fares in relation to the charges for comparable services on the same scheduled flight. According to Northwest, the DOD proposal would result in unwarranted Category A discounts of almost 80 percent from regular economy fares and would raise serious questions of discrimination and preference. Northwest maintains that the minimum Category A passenger fare should be no less than the one-way Category B charter rate, which allows a substantial benefit to DOD.

Trans International Airlines, Inc., Trans World Airlines, Inc., and United Air Lines, Inc., object to basing minimum fares for individually ticketed service on the Category B charter minimum rates. TWA asserts that the mechanical reduction of Category A and Z fares on the basis of Category B cost factors is not justified. TWA and TIA contend that costs on commercial scheduled flights are higher than charter costs; that additional costs such as landing fees, traffic-handling, and reservation service are incurred in commercial service; that load factors are only 50 percent of those on charters; and that the cost-saving factors applied in determining one-way charter minimum rates are not applicable to scheduled flights. In addition, TIA, a supplemental air carrier, states that minimum Category A and Z fares should be higher than minimum Category B charter rates to offer a measure of protection to Category B carriers. If a relationship between Category B and Category A minimum rates is to be continued, TWA suggests that the Category A minimum fare should be at least twice the Category B minimum roundtrip passenger rate to eliminate the backhaul factors used in computing the one-way Category B minimum rate.

The Board has determined that it should not depart from its policy of equating the individually ticketed passenger minimum rate with the one-way Category B minimum rate. Accordingly, consistent with its companion action in Part 288 relating to one-way Category B standard jet passenger charters, the Board is establishing a minimum rate for individually ticketed military passengers of 3.40 cents per passenger-mile, which is 6 percent below the current minimum rate.

When reduced to its essence, DOD's proposal to abolish the distinction between Category A and B does not appear to differ in substance from its proposals in previous reviews that it be permitted to move individually ticketed passengers at the roundtrip Category B minimum rate, except to the extent that a directional imbalance in the flow of such traffic develops. The reasons for rejecting this argument, which in the Board's view continue to be relevant and valid, have been detailed in past reviews and need not be recounted here.

The Board has also found arguments by TWA and TIA that the individually ticketed passenger minimum rate should be higher than the one-way Category B minimum rate unpersuasive. It is true, as TWA points out, that the unit costs of international scheduled passenger services have not declined during the past year to the extent that is indicated for charter services. However, the individually ticketed minimum rate has never been established with reference to objective cost standards. The Board has pointed out on numerous occasions that it knows of no way of isolating the cost of Category A passenger service. None of the carriers now participating in the carriage of individually ticketed military passengers argue that the minimum rate applicable to such traffic should be based on fully allocated costs. The carriers themselves initiated the practice of providing a discount for such traffic, and

[1] The notice also proposed to continue the fare relationship between Category X passengers moved in planeloads and the Category B round-trip charter minimum rate. No comments were received on the proposal, and it is adopted herein.

only in comparatively recent times has the Board established minimum rates for such traffic.

The Board has consistently recognized that individually ticketed military traffic generally uses seats that otherwise would be empty and in this respect resembles other types of traffic, such as domestic military standby traffic, for which the carriers have filed fares providing substantial discounts that have been accepted by the Board. In addition, the Board has also recognized that one-way charters represent an essentially uneconomic use of resources, and it has therefore been reluctant to establish an economic incentive favoring one-way charters over scheduled services by making scheduled services subject to minimum rates higher than those applicable to one-way charters.

Considering the benefits obtained by the carriers from individually ticketed military traffic in terms of higher load factors and route support, the Board believes that a minimum rate for such traffic authorizing discounts of fairly substantial proportions is not unreasonable. We also believe that adherence to the policy of not providing an economic incentive favoring one-way charters is indicated, unless it is shown that this policy, in application, is likely to encourage discounts substantially out of line with those allowed for similar types of traffic, threatening the economic viability of such services.

In this connection, the Board has noted that the new minimum rate for individually ticketed military passengers established herein does not authorize discounts from normal economy fares that are significantly in excess of the discounts granted domestically for various categories of standby traffic. In addition, neither TWA nor any other carrier has introduced evidence indicating that a reduction in the Category A fare of the proportions established will in any way threaten the continued profitability of international scheduled services performed by American-flag carriers.

Finally, the Board has noted that TIA has failed to produce any convincing evidence indicating a need on the part of carriers performing only Category B services for protection in the form of higher individually ticketed minimum rates.

Individually waybilled Military Cargo Transportation. With respect to Category A individually waybilled cargo, the notice proposed to abandon the dual-element minimum-rate structure and to establish uniform minimum rates of 12 cents per ton-mile for outbound cargo and 10 cents per ton-mile for inbound cargo. As in the case of passenger fares, the DOD proposal for common-rating Category A and B cargo minimum rates was rejected.

TIA, TWA, and Pan American World Airways, Inc., oppose the Board proposal. TIA objects to Category A cargo minimum rates equal to or lower than the Category B minimum rate for the same reasons that it objected to the proposed Category A passenger minimum rate. TWA and Pan Am contend that Category A minimum rates lower than the Category B minimum one-way charter rate are justified only when applied to top-off cargo in scheduled service and that any greater volume should be charged the one-way Category B minimum rate. Pan Am states that top-off rates are not appropriate where substantial amounts of cargo are involved and where capacity requirements are affected. It also points out higher costs associated with scheduled service, such as fuel, traffic-handling, and idle capacity; and TWA maintains that improvements in unit costs of charters have no relevance to scheduled service. TWA also presents data purporting to contradict the statement in the notice to the effect that almost all outbound Atlantic Category A cargo is now rated at the 12-cent four-pallet rate. Pan Am proposes that the 12-cent outbound minimum rate apply to not more than four pallets per day at the point of origin of any service. TWA proposes no change in the current four-pallet-per-flight limit but suggests that, if the four-pallet limit is abandoned, the Category A minimum rate should be no lower than the Category B one-way minimum cargo rate, with perhaps an incentive adjustment for low-volume inbound cargo.

After giving full consideration to the matters raised in the comments, the Board has determined that it should adopt the minimum-rate structure proposed in the notice for individually waybilled cargo. We are therefore establishing minimum rates for transatlantic and transpacific individually waybilled cargo of 12 cents per ton-mile on shipments moving outbound from the United States, and 10 cents per ton-mile on shipments moving in the inbound direction.

Unlike minimum rates for individually ticketed military passengers, which have generally been equated with the one-way Category B passenger rate, the minimum rate applicable to individually waybilled military cargo has always been somewhat below the minimum rate applying to one-way Category B cargo charters. This rate structure was evolved by the carriers themselves well before the Board began establishing minimum rates for individually waybilled services.

Individually waybilled military cargo, like individually ticketed passengers, has never been the subject of a cost determination.[2] Instead, both the carriers and the Board have recognized that such traffic has special characteristics rendering it appropriate for special discount rates, and no party now argues that such traffic should be rated on the basis of a full allocation of the costs providing the scheduled all-cargo service on which it moves. Carrier arguments that the new minimums proposed in the notice do not reflect the cost differences between charter and scheduled services are therefore largely irrelevant, since the individually waybilled cargo minimums have not in the past been related to such considerations.

The minimum-rate structure currently applicable in the directions in which the great bulk of the volume flows consists of two parts. A 12-cent-per-ton-mile minimum rate applies to the first four pallets per flight, and a rate of 16.95 cents per ton-mile, which also is the current one-way Category B minimum rate, applies to pallets in excess of four per flight. The Board, in the notice, did not propose to change the 12-cent rate on the first four pallets, and the carrier parties have neither explicitly asked for, nor demonstrated a need for an increase in this rate. All of the controversy relative to this issue has been generated by the Board's proposal to remove the four-pallet-per-flight limitation on the availability of the 12-cent rate and thereby do away with the higher minimum rate now applying to pallets in excess of four per flight.

The existing two-part minimum-rate structure clearly gives rise to a rate anomaly. Under it, large shipments are rated higher than smaller ones; while, under traditional rate concepts, rates taper downward as the size of the shipment increases. This anomaly has given rise to a host of administrative and tariff problems, and the Board has determined that it should not perpetuate this anomaly without being convinced that it continues to serve a useful purpose.

When we first established the 12-cent minimum rate 2 years ago, the Board was aware of the fact that the rate was well below the unit-cost levels then obtaining on either transatlantic or transpacific cargo services. Nevertheless, recognizing that under ordinary circumstances military cargo merely takes advantage of capacity that would generally be operated empty, the Board determined that a minimum rate at this low level was appropriate for traffic of such a top-off character. However, we were also aware of problems then first arising out of the military's rapidly expanding need for cargo capacity in the Pacific compounded by restrictions then being imposed on cargo frequencies by foreign governments in the Pacific area. The Board was therefore concerned that, unless a limit were placed on the use of the 12-cent rate to assure that it applied only to an amount that could reasonably be considered top-off in relation to the available capacity, either the economic viability of the operations would be threatened or DOD would be faced with difficulties in meeting its capacity needs. It was this concern that gave rise to the four-pallet limitation on the 12-cent rate.

As indicated previously, the four-pallet limitation has really had relevance only to Pacific operations. The volume of military traffic moving in the Atlantic has not, when viewed in relation to the total capacity offered, exceeded an amount that could be reasonably considered as top-off in character. It appears that the

[2] The commercial cargo rate structure, like the passenger fare structure, consists of a wide variety of rates. In addition to the general commodity rate, many specific items are subject to special rates at widely varying levels. There are a number of relatively low promotional rates, similar to the Category A rate, which are comparable to the promotional fares available in passenger transportation.

great bulk of the military cargo now transiting the Atlantic moves at the 12-cent rate and will not be affected by the removal of the four-pallet restriction. The affected carriers have not demonstrated in their comments that the proposed removal of the four-pallet restriction will threaten them with volumes of low-rated military cargo well in excess of what reasonably can be considered top-off traffic.[2] In these circumstances, the Board has determined that continued imposition of the four-pallet limitation in the Atlantic is not warranted.

The situation in the Pacific is quite different. There, the volumes of military cargo now moving on Pan American's scheduled services to Southeast Asia substantially exceed the amount that might reasonably be considered top-off in character. However, the unit costs obtaining on such services have also declined substantially since the rate was first established 2 years ago, and this improvement appears in no small measure to be due to the high load factors being experienced outbound from the United States as a result of the high level of military cargo capacity requirement.[3] These services have been highly profitable notwithstanding large amounts of low-rated military cargo making use thereof. Considering the unusual circumstances now prevailing in the Pacific as indicated by the facts noted above, the Board concluded in the notice that Pan American's Pacific schedules could continue to be operated on a reasonably profitable basis notwithstanding removal of the four-pallet restriction on the low 12-cent individually way-billed minimum rate. In its response to the notice, Pan American failed to demonstrate that the Board's conclusions in this respect were in error. Accordingly, we have determined that the four-pallet restriction is no longer warranted in the Pacific.

Effective date. The notice stated that the Board would consider making the minimum rates for individual military transportation, as well as those for Category B charters, effective as of March 15, 1967. For the reasons discussed in ER-494, we have decided to make the revised Category B minimum rates effective June 1, 1967, and we will adopt the same effective date for the new Category A, Z, and X minimum rates adopted herein, in order to maintain rate parity.

Amendments. As part of this rulemaking proceeding, the minimum-rate conditions applicable to Logair and Quicktrans domestic cargo charters, previously included in § 399.16, have been incorporated in Part 288 of the Economic Regulations (ER-494).

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 399, Statements of General Policy (14 CFR Part 399), effective June 1, 1967, by amending § 399.16 to read as follows:

§ 399.16 Military exemptions.

* * * * *

(b) [Reserved]

(c) [Reserved]

(d) The minimum charges considered fair and reasonable for the transportation of Category X passengers carried pursuant to the option provisions of MAC contracts in the direction opposite to individually waybilled cargo (Category A) will be 1.86 cents per passenger-mile: *Provided*, That such passengers shall be carried only in planeloads.

(e) The minimum charges considered fair and reasonable for the transportation of individually ticketed passengers (Categories A and Z) and individually waybilled cargo (Category A) in foreign and overseas air transportation and in air transportation between the 48 contiguous States on the one hand and Hawaii or Alaska on the other hand will be as follows:

(1) Passengers, 3.40 cents per passenger-mile second (economy) class; 3.29 cents per passenger-mile third (thrift) class.

(2) Cargo: Outbound, 12 cents per ton-mile. Inbound, 10 cents per ton-mile.

(3) * * *

(4) * * *

(5) * * *

(6) * * *

(Secs. 204, 403, and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758, 771, as amended; 49 U.S.C. 1324, 1373, 1386; and 5 U.S.C. 552, 80 Stat. 383.)

Effective June 1, 1967.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 67-6003; Filed, May 29, 1967; 8:49 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 541—DEFINING AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESMAN"

Academic Administrative Personnel or Teacher

On January 10, 1967, a notice was published in the FEDERAL REGISTER (32 F.R. 228) proposing to amend 29 CFR 541 by changing the title and text to make it responsive to section 13(a)(1) of the Fair Labor Standards Act (29 U.S.C. 213(a)(1)) as amended by the Fair Labor Standards Amendments of 1966 (P.L. 89-601) which now applies to those administrative personnel and teachers who are employed in a bona fide administrative or professional capacity.

Interested persons were invited to submit written data, views or argument. After consideration of all matter presented, and pursuant to section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)), Reorganization Plan No. 6 of 1950 (3 CFR 1949-1953 Comp., p. 1004), and General Order No. 45-A (15 F.R. 3290) of the Secretary of Labor, 29 CFR Part 541 is hereby amended as proposed, subject to the following changes:

1. The title of 29 CFR Part 541 is changed.

2. In paragraph (e) of § 541.3 the singular word "Island" is changed to the plural form: "Islands".

3. Reference to deletion of "§ 541.56" should be changed to "§ 541.5b".

4. Paragraph (b) of § 541.118 is revised.

5. In paragraph (c) of § 541.201 delete the comma after the word "measuring".

6. In paragraph (c) of 541.211 delete the comma after "educational establishment".

7. In subparagraph (3) of paragraph 541.300(a) delete the comma after "educational establishment".

8. In subparagraph (1) of paragraph 541.302(g) insert the word "educational" before the word "establishment" and substitute the word "institution" for the word "installation".

9. Change 541.314(b)(1).

10. In subparagraph (2) of § 541.314 (b) in line 5 and line 6 substitute the word "excepted" instead of the word "expected".

11. Paragraph (b) of § 541.602 is revised.

These amendments shall become effective upon publication in the FEDERAL REGISTER. The delayed effective date provided for in section 4(c) of the Administrative Procedure Act does not apply because 29 CFR Part 541 relates only to interpretative rules and statements of policy.

(29 U.S.C. 213(a)(1))

Signed at Washington, D.C., this 24th day of May 1967.

CLARENCE T. LUNDQUIST,
Administrator, Wage and Hour and Public Contracts Divisions.

1. The heading of Part 541 is revised to read as set forth above.

2. Subpart A of 29 CFR Part 541 is amended by adding § 541.0, revising §§ 541.1, 541.2, and 541.3; § 541.5b is deleted. The new and revised sections to read as follows:

§ 541.0 Terms used in regulations.

(a) "Administrator" means the Administrator of the Wage and Hour and Public Contracts Divisions, U.S. Department of Labor. The Secretary of Labor has delegated to the Administrator the functions vested in him under section

[2] Of the three transatlantic route carriers, only TWA commented specifically on this point. It provided yield data indicating an average yield of above 12 cents per ton-mile. It did not specifically explain how this yield related to the four-pallet limitation.

[3] We note that the international carriers, acting through the Composite Cargo Traffic Conference of the International Air Transport Association, have recently entered into an agreement providing for a substantial reduction in the general level of rates. This is particularly true in the Pacific, where decreases of more than 23 percent were agreed to for a broad range of commodities.

13(a)(1) of the Fair Labor Standards Act.

(b) "Act" means the Fair Labor Standards Act of 1938, as amended.

§ 541.1 Executive.

The term "employee employed in a bona fide executive * * * capacity" in section 13(a)(1) of the Act shall mean any employee:

(a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section:

Provided, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he is employed; and

(f) Who is compensated for his services on a salary basis at a rate of not less than $100 per week (or $75 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa) exclusive of board, lodging, or other facilities:

Provided, That an employee who is compensated on a salary basis at a rate of not less than $150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section.

§ 541.2 Administrative.

The term "employee employed in a bona fide * * * administrative * * * capacity" in section 13(a)(1) of the Act shall mean any employee:

(a) Whose primary duty consists of either:

(1) The performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, or

(2) The performance of functions in the administration of a school system or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c)(1) Who regularly and directly assist a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in the regulations of this subpart), or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(3) Who executes under only general supervision special assignments and tasks; and

(d) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e)(1) Who is compensated for his services on a salary or fee basis at a rate of not less than $100 per week (or $75 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa) exclusive of board, lodging, or other facilities, or

(2) Who, in the case of academic administrative personnel, is compensated for his services as required by subparagraph (1) of this paragraph or on a salary basis which is at least equal to the entrance salary for teachers in the school system or educational establishment or institution by which he is employed:

Provided, That an employee who is compensated on a salary or fee basis at a rate of not less than $150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of work described in paragraph (a) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

§ 541.3 Professional.

The term "employee employed in a bona fide * * * professional capacity" in section 13(a)(1) of the Act shall mean any employee:

(a) Whose primary duty consists of the performance of:

(1) Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(2) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or

(3) Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher certified or recognized as such in the school system or educational establishment or institution by which he is employed; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for his services on a salary or fee basis at a rate of not less than $115 per week (or $95 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa) exclusive of board, lodging, or other facilities:

Provided, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, or in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, or in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section.

Provided, That an employee who is compensated on a salary or fee basis at a rate of not less than $150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance either of work described in paragraph (a) (1) or (3) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

§ 541.5b [Deleted]

3. Sections 541.99 and 541.100 are revised to read as follows:

§ 541.99 Introductory statement.

(a) Section 13(a)(1) of the Fair Labor Standards Act, as amended, exempts from the wage and hour provisions of the Act "any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or

teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities)". The requirements of the exemption under this section of the Act are contained in Subpart A of this part.

§ 541.100 The definition of "executive".

Section 541.1 defines the term "bona fide executive" as follows: The term "employee employed in a bona fide executive * * * capacity" in section 13(a)(1) of the Act shall mean any employee:

(a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section:

Provided, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he is employed; and

(f) Who is compensated for his services on a salary basis at a rate of not less than $100 per week (or $75 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa) exclusive of board, lodging, or other facilities:

Provided, That an employee who is compensated on a salary basis at a rate of not less than $150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section.

4. Section 541.112 is revised to read as follows:

§ 541.112 Percentage limitations on nonexempt work.

(a) An employee will not qualify for exemption as an executive if he devotes more than 20 percent, or in the case of an employee of a retail or service establishment if he devotes as much as 40 percent, of his hours worked in the workweek to nonexempt work. This test is applied on a workweek basis and the percentage of time spent on nonexempt work is computed on the time worked by the employee.

(b)(1) The maximum allowance of 20 percent for nonexempt work applies unless the establishment by which the employee is employed qualifies for the higher allowance as a retail or service establishment within the meaning of the Act. Such an establishment must be a distinct physical place of business, open to the general public, which is engaged on the premises in making sales of goods or services to which the concept of retail selling or servicing applies. As defined in section 13(a)(2) of the Act, such an establishment must make at least 75 percent of its annual dollar volume of sales of goods or services from sales that are both not for resale and recognized as retail in the particular industry. Types of establishments which may meet these tests include stores selling consumer goods to the public; hotels; motels; restaurants; some types of amusement or recreational establishments (but not those offering wagering or gambling facilities); hospitals, or institutions primarily engaged in the care of the sick, the aged, the mentally ill or defective residing on the premises, if open to the general public; public parking lots and parking garages; auto repair shops; gasoline service stations (but not truck stops); funeral homes; cemeteries; etc. Further explanation and illustrations of the establishments included in the term "retail or service establishment" as used in the Act may be found in Part 779 of this chapter.

(2) Public and private elementary and secondary schools and institutions of higher education are, as a rule, not retail or service establishments, because they are not engaged in sales of goods or services to which the retail concept applies. Under section 13(a)(2)(iii) of the Act prior to the 1966 amendments, it was possible for private schools for physically or mentally handicapped or gifted children to qualify as retail or service establishments if they met the statutory tests, because the special types of services provided to their students were considered by Congress to be of a kind that may be recognized as retail. Such schools, unless the nature of their operations has changed, may continue to qualify as retail or service establishments and, if they do, may utilize the greater tolerance for nonexempt work provided for executive and administrative employees of retail or service establishments under section 13(a)(1) of the Act.

(3) The legislative history of the Act makes it plain that an establishment engaged in laundering, cleaning, or repairing clothing or fabrics is not a retail or service establishment. When the Act was amended in 1949, Congress excluded such establishments from the exemption under section 13(a)(2) because of the lack of a retail concept in the services sold by such establishments, and provided a separate exemption for them which did not depend on status as a retailer. Again in 1966, when this exemption was repealed, Congress made it plain by exclusionary language that the exemption for retail or service establishments was not to be applied to laundries or dry cleaners.

(c) There are two special exceptions to the percentage limitations of paragraph (a) of this section:

(1) That relating to the employee in "sole charge" of an independent or branch establishment, and

(2) That relating to an employee owning a 20-percent interest in the enterprise in which he is employed.

These except the employee only from the percentage limitations on nonexempt work. They do not except the employee from any of the other requirements of § 541.1. Thus, while the percentage limitations on nonexempt work are not applicable, it is clear that an employee would not qualify for the exemption if he performs so much nonexempt work that he could no longer meet the requirement of § 541.1(a) that his primary duty must consist of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof.

5. Section 541.117 is revised to read as follows:

§ 541.117 Amount of salary required.

(a) Compensation on a salary basis at a rate of not less than $100 per week is required for exemption as an executive. The $100 a week may be translated into equivalent amounts for periods longer than 1 week. The requirement will be met if the employee is compensated biweekly on a salary basis of $200, semimonthly on a salary basis of $216.67 or monthly on a salary basis of $433.33. However, the shortest period of payment which will meet the requirement of payment "on a salary basis" is a week.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an "executive" is $75 per week.

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in Subpart A of this part do not prohibit the sale of such facilities to executives on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

(d) The validity of including a salary requirement in the regulations in Subpart A of this part has been sustained in a number of appellate court decisions. See, for example, Walling v. Yeakley, 140 F. (2d) 830 (C.A. 10); Helliwell v. Haberman, 140 F. (2d) 833 (C.A. 2); and

Walling v. Morris, 155 F. (2d) 832 (C.A. 6) (reversed on another point in 332 U.S. 442); Wirtz v. Mississippi Publishers, 364 F. (2d) 603 (C.A. 5); Craig v. Far West Engineering Co., 265 F. (2d) 251 (C.A. 9) cert. den. 361 U.S. 816; Hofer v. Federal Cartridge Corp., 71 F. Supp. 243 (D.C. Minn.).

6. Paragraph (b) of § 541.118 is revised.

§ 541.118 Salary basis.

* * * * *

(b) *Minimum guarantee plus extras.* It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of $100 or more per week and, in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of his branch if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that he will receive not less than the amount specified in the regulations in any week in which he performs any work. Such arrangements are subject to the exceptions in paragraph (a) of this section. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement of payment "on a salary basis". For example, a salary of $145 a week may not arbitrarily be divided into a guaranteed minimum of $100 paid in each week in which any work is performed, and an additional $45 which is made subject to deductions which are not permitted under pararaph (a) of this section.

* * * * *

7. Section 541.119 is revised to read as follows:

§ 541.119 Special proviso for high salaried executives.

(a) Section 541.1 contains a special proviso for managerial employees who are compensated on a salary basis at a rate of not less than $150 per week exclusive of board, lodging, or other facilities. Such a highly paid employee is deemed to meet all the requirements in paragraphs (a) through (f) of § 541.1 if his primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof and includes the customary and regular direction of the work of two or more other employees therein. If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under paragraphs (a) through (f) of § 541.1.

(b) Mechanics, carpenters, linotype operators, or craftsmen of other kinds are not exempt under the proviso no matter how highly paid they might be.

8. Section 541.200 is revised to read as follows:

§ 541.200 Definition of "administrative".

Section 541.2 defines the term "bona fide * * * administrative" as follows: The term "employee employed in a bona fide * * * administrative * * * capacity" in section 13(a)(1) of the Act shall mean any employee:

(a) Whose primary duty consists of either:

(1) The performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, or

(2) The performance of functions in the administration of a school system or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c)(1) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in the regulations of this subpart), or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(3) Who executes under only general supervision special assignments or tasks; and

(d) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e)(1) Who is compensated for his services on a salary or fee basis at a rate of not less than $100 per week (or $75 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa) exclusive of board, lodging, or other facilities, or

(2) Who, in the case of academic administrative personnel, is compensated for his services as required by subparagraph (1) of this paragraph, or on a salary basis in an amount which is at least equal to the entrance salary for teachers in the school system or educational establishment or institution by which he is employed.

Provided, That an employee who is compensated on a salary or fee basis at a rate of not less than $150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of work described in paragraph (a) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

9. In § 541.201 a new paragraph (c) is added to read as follows:

§ 541.201 Types of administrative employees.

* * * * *

(c) Individuals engaged in the overall academic administration of an elementary or secondary school system include the superintendent or other head of the system and those of his assistants whose duties are primarily concerned with administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program. In individual school establishments those engaged in overall academic administration include the principal and the vice principals who are responsible for the operation of the school. Other employees engaged in academic administration are such department heads as the heads of the mathematics department, the English department, the foreign language department, the manual crafts department, and the like. Institutions of higher education have similar organizational structure, although in many cases somewhat more complex.

10. In § 541.202, a new paragraph (e) is added to read as follows:

§ 541.202 Categories of work.

* * * * *

(e) Work performed by employees in the capacity of "academic administrative" personnel is a category of administrative work limited to a class of employees engaged in academic administration as contrasted with the general usage of "administrative" in the act. The term "academic administrative" denotes administration relating to the academic operations and functions in a school rather than to administration along the lines of general business operations. Academic administrative personnel are performing operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration. Examples of jobs in school systems and educational establishments and institutions which are outside the term academic administration are jobs relating to building management and maintenance, jobs relating to the health of the students and academic staff such as social workers, psychologist, lunch room manager, or dietitian. Employees in such work which is not considered academic administration may qualify for exemption under other provisions of § 541.2 or under other sections of the regulations in Subpart A of this part provided the requirements for such exemptions are met.

11. Sections 541.206 and 541.209 are revised to read as set out below:

§ 541.206 Primary duty.

(a) The definition of "administrative" exempts only employees who are primarily engaged in the responsible work which is characteristic of employment in a bona fide administrative capacity. Thus, the employee must have as his primary duty office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, or, in the case of "academic administrative personnel," the employee must have as his primary duty work that is directly related to academic administration or general academic operations of the school in whose operations he is employed.

(b) In determining whether an employee's exempt work meets the "primary duty" requirement, the principles explained in § 541.103 in the discussion of "primary duty" under the definition of "executive" are applicable.

§ 541.209 Percentage limitations on nonexempt work.

(a) Under § 541.2(d), an employee will not qualify for exemption as an administrative employee if he devotes more than 20 percent, or, in the case of an employee of a retail or service establishment if he devotes as much as 40 percent, of his hours worked in the workweek to nonexempt work; that is, to activities which are not directly and closely related to the performance of the work described in § 541.2 (a) through (c).

(b) This test is applied on a workweek basis and the percentage of time spent on nonexempt work is computed on the time worked by the employee.

(c) The tolerance for nonexempt work allows the performance of nonexempt manual or nonmanual work within the percentages allowed for all types of nonexempt work.

(d) Refer to § 541.112(b) for the definition of a retail or service establishment as this term is used in paragraph (a) of this section.

12. Section 541.211 is revised to read as set out below:

§ 541.211 Amount of salary or fees required.

(a) Except as otherwise noted in paragraphs (b) and (c) of this section, compensation on a salary or fee basis at a rate of not less than $100 a week (exclusive of board, lodging, or other facilities) is required for exemption as an "administrative" employee. The requirement will be met if the employee is compensated biweekly on a salary basis of $200, semimonthly on a salary basis of $216.67 or monthly on a salary basis of $433.33.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the required compensation is $75 per week.

(c) In the case of academic administrative personnel, the compensation requirement for exemption as an administrative employee may be met either by the payment described in paragraph (a) or (b) of this section, whichever is applicable, or alternatively by compensation on a salary basis in an amount which is at least equal to the entrance salary for teachers in the school system, or educational establishment or institution by which the employee is employed.

(d) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations do not prohibit the sale of such facilities to administrative employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

13. Section 541.214 is revised to read as set out below:

§ 541.214 Special proviso for high salaried administrative employees.

Section 541.2 contains a special proviso including within the definition of "administrative" an employee who is compensated on a salary or fee basis at a rate of not less than $150 per week exclusive of board, lodging, or other facilities, and whose primary duty consists of either the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, or the performance of functions in the administration of a school system or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein, where the performance of such primary duty includes work requiring the exercise of discretion and independent judgment. Such a highly paid employee engaged in such work as his primary duty is deemed to meet all the requirements in § 541.2 (a) through (c). If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under § 541.2 (a) through (c).

14. A new § 541.215 is added to read as follows:

§ 541.215 Elementary or secondary schools and other educational establishments and institutions.

To be considered for exemption as employed in the capacity of "academic administrative personnel," the employment must be in connection with the operation of an elementary or secondary school system, an institution of higher education or other educational establishment or institution. Sections 3(v) and 3(w) of the act define elementary and secondary schools as those day or residential schools which provide elementary or secondary education, as determined under State law. Under the laws of most States, such education includes the curricula in grades 1 through 12; under many it includes also the introductory programs in kindergarten. Such education in some States may include also nursery school programs in elementary education and junior college curricula in secondary education. Education above the secondary school level is in any event included in the programs of institutions of higher education. Special schools for mentally or physically handicapped or gifted children are included among the educational establishments in which teachers and academic administrative personnel may qualify for the administrative exemption, regardless of any classification of such schools as elementary, secondary, or higher. Also, for purposes of the exemption, no distinction is drawn between public or private schools. Accordingly, the classification for other purposes of the school system or educational establishment or institution is ordinarily not a matter requiring consideration in a determination of whether the exemption applies. If the work is that of a teacher or academic personnel as defined in the regulations, in such an educational system, establishment, or institution, and if the other requirements of the regulations are met, the level of instruction involved and the status of the school as public or private or operated for profit or not for profit will not alter the availability of the exemption.

15. Section 541.300 is revised to read as follows:

§ 541.300 Definition of "professional".

Section 541.3 defines the term "bona fide * * * professional" as follows: The term "employee employed in a bona fide * * * professional capacity" in section 13(a)(1) of the Act shall mean any employee:

(a) Whose primary duty consists of the performance of:

(1) Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(2) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or

(3) Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher certified or recognized as such in the school system, or educational establishment or institution by which he is employed; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident

to the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for his services on a salary or fee basis at a rate of not less than $115 per week (or $95 per week if employed in Puerto Rico, the Virgin Islands, or American Samoa) exclusive of board, lodging, or other facilities:

Provided, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, or in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, or in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section.

Provided, That an employee who is compensated on a salary or fee basis at a rate of not less than $150 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance either of work described in paragraph (a) (1) or (3) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

16. In § 541.302 paragraph (e) is revised and a new paragraph (g) is added, to read as follows:

§ 541.302 Learned professions.

* * * * *

(e) No need appears to translate the word "prolonged" into arithmetical terms. Generally speaking, the professions which meet this requirement will include law, medicine, nursing, accountancy, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, including pharmacy and so forth. The typical symbol of the professional training and the best prima facie evidence of its possession is, of course, the appropriate academic degree, and in these professions an advanced academic degree is a standard (if not absolutely universal) prerequisite.

* * * * *

(g)(1) A requisite for exemption as a teacher is the condition that the employee is "employed and engaged" in this activity as a teacher certified or recognized as such in the school system, educational establishment or institution by which he is employed.

(2) "Employed and engaged as a teacher" denotes employment and engagement in the named specific occupational category as a requisite for exemption. Teaching consists of the activities of teaching, tutoring, instructing, lecturing, and the like in the activity of imparting knowledge. Teaching personnel may include the following (although not necessarily limited to): Regular academic teachers; teachers of kindergarten or nursery school pupils or of gifted or handicapped children; teachers of skilled and semiskilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisers in such areas as drama, forensics, or journalism are engaged in teaching. Such activities are a recognized part of the school's responsibility in contributing to the educational development of the student.

(3) Within the public schools of all the States, certificates, whether conditional or unconditional, have become a uniform requirement for employment as a teacher at the elementary and secondary levels. The possession of an elementary or secondary teacher's certificate provides a uniform means of identifying the individuals contemplated as being within the scope of the exemption provided by the statutory language and defined in § 541.3(a)(3) with respect to all teachers employed in public schools and those private schools who possess State certificates. However, the private schools of all the States are not uniform in requiring a certificate for employment as an elementary or secondary school teacher, and teacher's certificates are not generally necessary for employment as a teacher in institutions of higher education or other educational establishments which rely on other qualification standards. Therefore, a teacher who is not certified but is engaged in teaching in such a school may be considered for exemption provided that such teacher is recognized as meeting the minimum qualifications for employment as a teacher by the employing school or school system and satisfies the other requirements of § 541.3.

(4) Whether certification is conditional or unconditional will not affect the determination as to employment within the scope of the exemption contemplated by this section. There is no standard terminology within the States referring to the different kinds of certificates. The meanings of such labels as permanent, standard, provisional, temporary, emergency, professional, highest standard, limited, and unlimited vary widely. For the purpose of this section the terminology affixed by the particular State in designating the certificates does not affect the determination of the exempt status of the individual.

17. In § 541.303 paragraph (e)(1) is revised to read as follows:

§ 541.303 Artistic professions.

* * * * *

(e)(1) The determination of the exempt or nonexempt status of radio and television announcers as professional employees has been relatively difficult because of the merging of the artistic aspects of the job with the commercial. There is considerable variation in the type of work performed by various announcers, ranging from predominantly routine to predominantly exempt work. The wide variation in earnings as between individual announcers, from the highly paid "name" announcer on a national network who is greatly in demand by sponsors to the staff announcer paid a comparatively small salary in a small station, indicates not only great differences in personality, voice and manner, but also in some inherent special ability or talent which, while extremely difficult to define, is nevertheless real.

* * * * *

18. Section 541.304 is revised to read as follows:

§ 541.304 Primary duty.

(a) For a general explanation of the term "primary duty" see the discussion of this term under "executive" in § 541.103. See also the discussion under "administrative" in § 541.206.

(b) The "primary duty" of an employee employed as a teacher must be that of activity in the field of teaching. Mere certification by the State, or employment in a school will not suffice to qualify an individual for exemption within the scope of § 541.3(a)(3) if the individual is not in fact both employed and engaged as a teacher (see § 541.302 (g)(2)). The words "primary duty" have the effect of placing major emphasis on the character of the employee's job as a whole. Therefore, employment and engagement in the activity of imparting knowledge as a primary duty shall be determinative with respect to employment within the meaning of the exemption as "teacher" in conjunction with the other requirements of § 541.3.

19. In § 541.307 a new paragraph (c) is added to read as follows:

§ 541.307 Essential part of and necessarily incident to.

* * * * *

(c) Section 541.3(d) takes into consideration the fact that there are teaching employees whose work necessarily involves some of the actual routine duties and physical tasks also performed by nonexempt employees. For example, a teacher may conduct his pupils on a field trip related to the classroom work of his pupils and in connection with the field trip engage in activities such as driving a school bus and monitoring the behavior of his pupils in public restaurants. These duties are an esstential part of and necessarily incident to his job as teacher. However, driving a school bus each day at the beginning and end of the school day to pick up and deliver pupils would not be exempt type work.

20. Section 541.311 is revised to read as follows:

§ 541.311 Amount of salary or fees required.

(a) Except as otherwise noted in paragraphs (b) and (c) of this section, compensation on a salary or fee basis at a rate of not less than $115 per week (ex-

clusive of board, lodging, or other facilities) is required for exemption as a "professional" employee. An employee will meet the requirement if he is paid a biweekly salary of $230, a semimonthly salary of $249.17, or a monthly salary of $498.33.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the required salary is $95 per week.

(c) The payment of the compensation specified in paragraph (a) or (b) of this section is not a requisite for exemption in the case of employees exempted from this requirement by the proviso to § 541.3 (e), as explained in § 541.314.

(d) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in Subpart A of this part do not prohibit the sale of such facilities to professional employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

21. In § 541.313 paragraphs (c) and (d) are revised to read as follows:

§ 541.313 Fee basis.

* * * * *

(c) The adequacy of a fee payment—whether it amounts to payment at a rate of not less than $115 per week to a professional employee (or at a rate of not less than $100 per week to an administrative employee)—can ordinarily be determined only after the time worked on the job has been determined. In determining whether payment is at the rate specified in the regulations in Subpart A of this part the amount paid to the employee will be tested by reference to a standard workweek of 40 hours. Thus compliance will be tested in each case of a fee payment by determining whether the payment is at a rate which would amount to at least $115 per week to a professional employee (or at a rate of not less than $100 per week to an administrative employee) if 40 hours were worked.

(d) The following examples will illustrate the principle stated above:

(1) A singer receives $25 for a song on a 15-minute program (no rehearsal time is involved). Obviously the requirement will be met since the employee would earn $115 at this rate of pay in far less than 40 hours.

(2) An artist is paid $60 for a picture. Upon completion of the assignment, it is determined that the artist worked 20 hours. Since earnings at this rate would yield the artist $120 if 40 hours were worked, the requirement is met.

(3) An illustrator is assigned the illustration of a pamphlet at a fee of $120. When the job is completed, it is determined that the employee worked 60 hours. If he worked 40 hours at this rate, the employee would have earned only $80. The fee payment of $120 for work which required 60 hours to complete therefore does not meet the requirement of payment at a rate of $115 per week and the employee must be considered nonexempt. It follows that if in the performance of this assignment the illustrator worked in excess of 40 hours in any week, overtime rates must be paid. Whether or not he worked in excess of 40 hours in any week, records for such an employee would have to be kept in accordance with the regulations covering records for nonexempt employees (Part 516 of this chapter).

22. Sections 541.314 and 541.315 are revised to read as follows:

§ 541.314 Exception for physicians, lawyers, and teachers.

(a) A holder of a valid license or certificate permitting the practice of law or medicine or any of their branches, who is actually engaged in practicing the profession, or a holder of the requisite academic degree for the general practice of medicine who is engaged in an internship or resident program pursuant to the practice of his profession, or an employee employed and engaged as a teacher in the activity of imparting knowledge, is excepted from the salary or fee requirement. This exception applies only to the traditional professions of law, medicine, and teaching and not to employees in related professions which merely serve these professions.

(b) In the case of medicine:

(1) The exception applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term physicians means medical doctors including general practitioners and specialists, and osteopathic physicians (doctors of osteopathy). Other practitioners in the field of medical science and healing may include podiatrists (sometimes called chiropodists), dentists (doctors of dental medicine), optometrists (doctors of optometry or bachelors of science in optometry).

(2) Physicians and other practitioners included in subparagraph (1), of this paragraph, whether or not licensed to practice prior to commencement of an internship or resident program, are excepted from the salary or fee requirement during their internship or resident program, where such a training program is entered upon after the earning of the appropriate degree required for the general practice of their profession.

(c) In the case of medical occupations, the exception from the salary or fee requirement does not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

§ 541.315 Special proviso for high salaried professional employees.

The definition of "professional" contains a special proviso for employees who are compensated on a salary or fee basis (exclusive of board, lodging, or other facilities) at a rate of at least $150 per week. Under this proviso, the requirements for exemption in § 541.3 (a) through (c) will be deemed to be met by an employee who receives the higher salary or fees and whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning, or work as a teacher in the activity of imparting knowledge, which includes work requiring the consistent exercise of discretion and judgment, or consists of the performance of work requiring invention, imagination, or talent in a recognized field of artistic endeavor. Thus, the exemption will apply to highly paid employees employed either in one of the "learned" professions or in an "artistic" profession and doing primarily professional work. If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under § 541.3 (a) through (c).

23. Paragraph (b) of § 541.602 is revised to read as follows:

§ 541.602 Special proviso concerning executive and administrative employees in multistore retailing operations.

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(b) With respect to execute or administrative employees stationed in the main store of a multistore retailing operation who engage in activities (other than central office functions) which relate to the operations of the main store, and also to the operations of one or more physically separated units, such as branch stores, of the same retailing operation, the Divisions will, as an enforcement policy, assert no disqualification of such an employee for the section 13(a)(1) exemption by reason of nonexempt activities if the employee devotes less than 40 percent of his time to such nonexempt activities. This enforcement policy would apply, for example, in the case of a buyer who works in the main store of a multistore retailing operation and who not only manages the millinery department in the main store, but is also responsible for buying some or all of the merchandise sold in the millinery departments of the branch stores.

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Title 31—MONEY AND FINANCE: TREASURY

Chapter V—Office of Foreign Assets Control, Department of the Treasury

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

Importation of and Dealing in Certain Merchandise

Item 108 of the Appendix to § 500.204 is being amended to publish the standing policy of the Office of Foreign Assets Control of licensing the importation of publications and films which are bona fide gifts. This item is also being amended to delete the requirement that publications be imported directly from mainland China, North Korea or North Viet Nam. Licenses are issued in appropriate cases whether the import is direct from those areas or through a third country.